

**REMARKS****Claim Rejections – 35 U.S.C. § 102 and 103**

Initially, the undersigned would like to thank the Examiner for the courtesy of discussing the instant application by telephone on October 28, 2009, including various aspects of Khan that are explained in more detail in this paper. This proposed amendment sets out in greater detail Applicant's proposed amendment, as well as the differences over the cited art.

As noted above, claims 63 – 65 and 70 – 85 presently stand rejected under 35 U.S.C. 102(e) as allegedly anticipated by Khan et al. (US 2004/0029569 A1), while claims 66 – 69 presently stand rejected under 35 USC 103(a) as allegedly obvious over Khan in view of Stadelmann (US 6,415,156). Without acquiescence in the grounds of rejection and without prejudice to pursue the original claimed subject matter at a later time (by continuation application or otherwise), the claims have been amended herein to clarify the subject matter being claimed. This rejection is respectfully traversed.

Specifically, Applicant has amended claim 63 to recite "automatically detecting, at a local wireless station affiliated with a point-of-sale system, the transient *physical* presence of a specific mobile wireless cellular device within proximity of the wireless station, *without action by the user of the mobile wireless cellular device, by monitoring cellular radio frequencies utilized by the mobile wireless cellular device.*" Support for this amendment may be found, for example, at paragraphs [0029] and [0030] of the instant Specification, which describe the following operations:

[0001] Further details of examples of an initial handshake transaction will now be described, with particular reference to steps set forth in FIG. 5, as well as the exemplary system 200 illustrated in FIG. 2 and exemplary wireless local area network 300 illustrated in FIG. 3. According to the example of a handshake process 500 illustrated in FIG. 5, in a first step 502 the wireless handheld device 202 enters the cell 205 serviced by base station 204, or else is activated while in the cell 205. Either of these events will typically, depending upon the cellular network 220, cause the wireless handheld device 202 to register with the cellular network 220 (step 507). As indicated by step 510, the wireless station 252 (or 352) of the wireless local area network 260 (or 360) continuously scans the same frequencies and channels as used by the base station 204 of the cellular network 220. The wireless station 252 (or 352) may, for example, be programmed or configured when initially set up with knowledge of the frequencies and channels used by the base station 204. Alternatively, or in addition, where the local computer 366 includes a cellular network interface 380, the cellular network 220 may download information concerning the base station frequencies and channels to the local computer 366, which then conveys the information as a set of configuration parameters to the wireless station 352.

[0002] In step 513, the wireless handheld device 202 enters the range of microcell 250 and is detected by the wireless equipment 253 (or 353) of the wireless station 252 (or 352). For example, the wireless equipment 253 (or 353) may detect periodic re-registration or other sporadic communications between the wireless handheld device 202 and the base station 204. Alternatively, the cellular network 220 may be configured to notify the wireless local area network 260 that the particular wireless handheld device 202 is within cell 205, and the wireless equipment 252 (or 352) of the wireless local area network 260 (or 360) may attempt to page the wireless handheld device 202 periodically should the wireless handheld device 202 come within range (i.e., within microcell 250). The base station 204 may notify the wireless handheld device 202 to listen to a particular paging frequency or channel utilized by the wireless equipment 252 (or 352) of the wireless local area networks 260 (or 360), or else, for example, the wireless equipment 252 (or 352) may communicate with the wireless handheld device 202 using the base station 204 as an intermediary.

As observed in the introductory remarks, Khan does not suggest in any way that the MicroAdapter can detect the transient physical presence of a specific mobile wireless cellular device using cellular frequencies. Rather, Khan's MicroAdapter clearly uses other different techniques that are short range in nature (such as IR, Bluetooth or 802.11) to communicate with a portable device, in response to a communication initiated by the user. More specifically, Khan does not disclose or suggest the step of "automatically detecting, at a local wireless station affiliated with a point-of-sale system, the transient physical presence of a specific mobile wireless cellular device within proximity of the wireless station, without action by the user of the mobile wireless cellular device, by monitoring cellular radio frequencies utilized by the mobile wireless cellular device," as set forth in claim 63 as amended.

Khan's system is intended for direct interaction at the point-of-sale (such as a vending machine or cash register area) between a customer and the wireless station (MicroAdapter). Khan does not provide a useful solution for longer range wireless interaction.<sup>1</sup> It also does not provide "automatic" detection of the presence of a mobile wireless cellular device "without action by the user." Rather, Khan's system is specifically designed to respond to a transaction initiated by the user of the portable device. Khan would not be suitable for the type of applications that the claimed invention can support—e.g., relatively long range interaction between a specific mobile wireless cellular device and a point-of-sale system. Khan's system is also not well

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<sup>1</sup> Khan also mentions one embodiment in which the user can dial the phone number associated with the wireless station. (See Khan at ¶ 57) This embodiment has nothing to do with proximity detection; in fact, the user dialing the number could be across the country from the wireless station.

suited for the situation where many mobile wireless devices are within the communication range of a wireless station, and where a variety of different local wireless stations overlap in the same proximity (in part this is because Khan's wireless station communication range is so short that overlapping coverage areas are rarely an issue).

Thus, Khan not only differs structurally and operationally from the claimed invention, but also is inadequate for the purposes and functions served by the claimed invention.

For at least the above reasons, it is respectfully submitted that the pending claims are patentably distinct from the cited items, including Khan.

**Reservation of Right to Challenge Cited Item(s)**

While Applicant has addressed the cited items on the merits, this should not be construed as an admission that the cited items constitute prior art as against the claimed invention. Applicant reserves the right to antedate the cited item(s) pursuant to the appropriate rules, laws, and regulations if deemed necessary to do so.

Likewise, Applicant's election to address the cited items on the merits should not be construed as an admission that they provide an enabling disclosure. Applicant reserves the right to challenge the sufficiency of the cited items at a later point in time, including in any post-issuance proceeding or suit, if appropriate.

**Request for Allowance**

The Examiner is kindly requested to enter the amendments presented herein. The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any unresolved issue remains, the Examiner is invited to contact the undersigned by telephone to discuss those issues so that the Notice of Allowance can be mailed at the earliest possible date.

It is believed that the instant application is in condition for final allowance, and, accordingly, issuance of a notice of allowance is earnestly solicited.

Respectfully Submitted,

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